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CBS Asks Dismissal of Westmoreland Suit

By Eleanor Randolph
Washington Post Staff Writer

Libel lawyers for CBS argued yesterday that sworn statements from almost 40 military and intelligence analysts from the Vietnam war years prove the network's charge that the U.S. military command in Vietnam lied about enemy troop strength to bolster political support for the war in the late 1960s.

In a motion asking U.S. District Court Judge Pierre Leval to dismiss a \$120 million libel action against CBS by retired Army Gen. William C. Westmoreland, network lawyers said that "few broadcasts have been as thoroughly researched" as a Mike Wallace program called "The Uncounted Enemy: A Vietnam Deception," which ran in January, 1982.

Included in the CBS brief are quotations from letters that a former Army analyst sent his wife.

"You should have seen the antics my people and I had to go through with our computer calculations to make the February strength calculations come out the way the general wanted them to," one read. "We started with the answer and plugged in all sorts of figures until we found the combination the machine would digest."

The writer of the letter, James Meacham, now a journalist in London, has said recently that he was merely dissatisfied with his work and did not mean the letters to be construed years later as evidence of a conspiracy.

The CBS brief also quoted Richard Kovar, a 30-year CIA veteran who now writes President Reagan's daily CIA briefing, as saying that the CBS documentary is "a great service to the intelligence process."

The network brief also contended that Kovar said it should be broadcast annually on the anniversary of the Tet offensive "so that no intelligence analyst, soldier or citizen who watches it will ever let anything like this happen again."

Ronald Smith, a 25-year CIA intelligence officer and analyst who is at the Department of Energy, said that for CBS to call efforts to hold down enemy troop estimates a "conspiracy . . . accurately describes the concerted effort undertaken by military officials to distort and suppress critical intelligence information about the enemy we faced in Vietnam."

Drawing from almost 400,000 pages of court documents that have made the case an unusually detailed chronicle of one of the most crucial periods in the war and an important case for the media, CBS used a rare tactic in this pre-trial stage of a libel case, saying that the documentary is true and thus is not libelous. Such an assertion normally awaits the findings of the court as a result of the trial.

As a fallback to a more standard legal position in such cases, CBS lawyer David Boies also argued

that First Amendment protections of a free press in this country should warrant dismissal of Westmoreland's "attempt . . . to impose a price on criticism of the way in which our government's highest officials exercise their official powers" by his filing of the libel suit.

Boies acknowledged that the broadcast has flaws, some of which were the subject of a highly critical article in TV Guide last year and a recently released book charging that CBS set out to "smear" Westmoreland.

But Boies argued that "none of those flaws implicates either the truth of what the broadcast says or CBS' belief in it."

Don Kowet, author of a controversial new book about the documentary, "A Matter of Honor," and Sally Bedell, now with The New York Times, wrote the an article in TV Guide, "Anatomy of a Smear—How CBS Broke the Rules and 'Got' Westmoreland."

After the story, CBS conducted an internal investigation that criticized the network for re-interviewing some witnesses unfairly, for not identifying former CIA analyst Sam Adams on the air as a paid CBS consultant and for failing to prove that there was a "conspiracy" by the military to "cook" the figures, as such manipulations are sometimes called.

In June, 1983, CBS suspended the show's producer, George Crile, for taping telephone interviews with former secretary of defense Robert S. McNamara and others without their knowledge. The tapes and the internal CBS investigation have become a part of the voluminous record.

Westmoreland's lawyer, Dan M. Burt, said he could not comment in detail on a motion he had not read. He labeled as "ridiculous" a CBS argument that Westmoreland cannot sue for libel be-